IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

WP(C).No. 11712 of 2007(T)

PETITIONER:

JOHNSSY JACOB, KACHARA HOUSE,
MUNDIAPPALLY P.O., KUNNAMTHANAM,
THIRUVALLA, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY FINANCE DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

2. SUB TREASURY OFFICER, TIRUVALLA.

BY GOVT.PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.11712/2007)

EXT.P1: TRUE COPY OF GOVT. ORDER DT. 1/3/2000.

EXT.P2: TRUE COPIES OF LETTERS DT. 16/9/02 AND 1/10/2002 BY R2.

EXT.P3: TRUE COPY OF ORDER DT. 12/12/2002.

EXT.P4: TRUE COPY FO COMMUNICATION DT. 21/2/2003.

EXT.P5: TRUE COPY OF REPRESENTATION DT. 10/8/2006.

EXT.P6: TRUE COPY FO ORDER DT. 19/9/2006.

EXT.P7: TRUE COPY OF LETTER DT. 20/10/2006.

EXT.P8: TRUE COPY OF MEDICAL CERTIFICATE DT. 21/12/2006.

A.K. Basheer, J.

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W.P(C) No. 11712 of 2007-T

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Dated this the 24th day of May, 2007.

J U D G M E N T

Smt.T.J.Sosamma retired from service as Lower Primary School Teacher on March 31, 1986. Petitioner is her son. It is contended by the petitioner that his mother was granted pension as authorised by the Accountant General in his order dated August 26, 1996. Since petitioner's mother was away in the United States of America along with her husband, she could not draw her pension with effect from October 1, 1996 as ordered by the authority. Ext.P1 order dated March 1, 2000 reveals that the Government had revalidated the "Pension Order" and directed release of arrears of pension and allowances to her from October 1, 1996 as per Article 294(b) and other relevant provisions of Kerala Treasury Code Volume I and in relaxation of G.O(P)1612/98/Fin dated 25/7/1998 on condition that future pension should be drawn regularly and if the pensioner is to be absent from the State she should make arrangements in terms of Rules 127 and 129 Part III Kerala Service Rules for the continued drawal of the pension in future. Request for further revalidation would not be entertained in future under any circumstances. (emphasis supplied).

2. It is contended by the petitioner that pension was not released to his mother as directed in Ext.P1. It appears that in response to a letter received from the Accountant General, it was ordered by the Government that sanction for revalidation was only with effect from September 12, 2002, the date of application. A copy

of the order issued by the Government is on record as Ext.P3. In other words, the claim made on behalf of petitioner's mother for arrears from October 1996 till date of application was rejected by the Government relying on circular No.3/2000/Fin dated 17/1/2000. Consequently, the office of the Accountant General by its communication dated February 21, 2003 informed the Sub Treasury Officer, Thiruvalla that petitioner's mother would be entitled to get arrears of pension only with effect from the date of her application. Copy of the said communication issued by the office of the Accountant General is on record as Ext.P4. In response to a representation submitted by the petitioner's mother, the Government informed through Ext.P6 communication that arrears of pension would be allowed only very sparingly and only in "deserving circumstances and not on vague reasons like out of station". The same stand was reiterated by the Government in Ext.P7 response to a letter addressed by the local M.L.A on behalf of petitioner's mother.

3. It is in the above circumstances that the petitioner has preferred this writ petition praying for issuance of a writ of certiorari to quash Exts.P3, P6 and P7 orders. There is a further prayer for issuance of a writ of mandamus to the respondents to disburse Rs.3,05,433/- towards the arrears of pension payable to petitioner's mother from October 1, 1996 till September 30, 2002.

4. Before I deal with the merit of the above contentions raised by the petitioner, one crucial aspect has to be noticed. It is admitted by the petitioner that his mother is in the United States of America even now. He contends that she has authorised him to take necessary steps to claim the arrears of pension and had executed a Power of Attorney in his favour. But the Power of Attorney has not been produced. No

other document authorising the petitioner to institute this writ petition or to collect the money on her behalf has also been produced before this Court.

5. It is true that Rule 126 Part III enables a pensioner to draw pension through an authorised agent if permitted by the Government. Rule 129 postulates that "a pensioner who resides in the State may draw his pension through a duly authorised agent possessing a legally valid Power of Attorney who must produce a life certificate as referred to in Rule 126 and Rule 127 on each occasion, unless the duly authorised agent has executed an indemnity bond to refund overpayment in which case he has to produce the life certificate as aforesaid atleast once in a year. It is also pertinent to note that Rule 135 postulates that pension undrawn for more than 3 years ceases to be payable. However Rule 136 empowers the Government to grant arrears of pension in appropriate cases. But such arrears cannot be paid; (a) without the orders of the Audit Officer and (b) if the pension in arrears is to be paid for the first time or if the amount of arrears exceeds Rs.75,000/-, without the previous sanction of the Government to be obtained through the Audit Officer.

6. In Circular No.3 which is seen referred to in Ext.P3 order, it was clarified by the Government that the "re-validation of Pension Payment Orders and drawal of arrears of such non drawal periods in terms of Rule 136, Part III KSR read with Article 294 of the Kerala Treasury Code, Volume I will be invoked in future very sparingly and only in deserving circumstances and not on vague reasons like out of station etc".

7. I have carefully perused the averments made by the petitioner

allegedly on behalf of his mother in the writ petitions.

8. Having regard to the relevant provisions referred to in the Kerala Service Rules and also the circular, I am satisfied that the view taken by the Government in Ext.P3 is fully justified. Petitioner has not produced the original pension order though it is seen mentioned in the writ petition that pension was authorised to his mother by order dated August 26, 1996. That means the pensioner was sanctioned pension only after 10 years of her retirement. In spite of the order of sanction, petitioner's mother did not draw the pension. Thereafter the order was got revalidated in the year 2000. Still, the pension was not drawn. By Ext.P4 communication dated February 21, 2003 the office of the Accountant General had informed the pensioner about Ext.P3 order of the Government. But no steps were taken by the pensioner to accept the pension. Only in August 2006, a request is seen sent by the pensioner to the Government to grant her the entire arrears. I have referred to the above aspects only to show that petitioner's mother who had been admittedly living in America with her husband, had not bothered to invoke the facility available to a pensioner, to draw her pension through a Power of Attorney Holder in terms of the provisions contained in Rule 126 to 129 of Part III KSR.

9. It is true that Government had passed Ext.P1 order revalidating the Pension Order with effect from October 1, 1996. But that was obviously in violation of the clauses contained in the relevant Rules in the KSR referred to above and also under Article 294 in Chapter IV of the Kerala Treasury Code. Apparently the clauses contained in Circular No.3 were also not taken into account while passing Ext.P1 order. As noticed already, petitioner has filed this writ

petition allegedly as authorised by his mother. Admittedly petitioner's mother has been living in America for the last several years. In such circumstances I am not satisfied that the petitioner is entitled to get any relief in the present petition. Prayer to quash Exts.P3,P6 and P7 cannot be allowed.

Writ Petition fails and it is accordingly dismissed.

A.K. Basheer
Judge.

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